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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/785,350

02/24/2004

Michael Gerds

1001.1447103

8745

28075

7590

09/09/2004

CROMPTON, SEAGER & TUFTE, LLC  
1221 NICOLLET AVENUE  
SUITE 800  
MINNEAPOLIS, MN 55403-2420

EXAMINER

HOOK, JAMES F

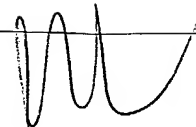
ART UNIT

PAPER NUMBER

3752

DATE MAILED: 09/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/785,350	Applicant(s) GERDTS ET AL. 	
	Examiner James F. Hook	Art Unit 3752	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 24 February 2004.
- 2a) ☐ This action is **FINAL**.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 13-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6-4-04</u> . | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION*****Claim Objections***

Claim 17 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 17 is a duplicate to claim 16 and is dependent from the same claim therefore there is no difference in scope between the two claims.

***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 13, 14, and 18-20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, and 4 of U.S. Patent No. 6,592,549. Although the conflicting claims are not identical, they are not patentably distinct from each other because the subject matter of the patented claims encompasses that of the claims in the instant application.

Claims 13, 18, and 19 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 7, 9, 14, and 18 of U.S. Patent No. 6,723,071. Although the conflicting claims are not identical, they are not patentably distinct from each other because the subject matter of the patented claims encompasses that of the claims in the instant application.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lau (855) in view of Muni. The patent to Lau discloses the recited rapid exchange stent delivery catheter comprising an inner tubular member 13 having a guide wire lumen there through 22 for wire 26, that passes through an opening in the inner tubular member as seen in figure 3, where inner tubular member is provided with a handle portion 35 and a distal head 58 which is sized to be larger than the inner diameter of an outer tubular member 10 at the exit portion thereof, the outer tubular member is also provided with a guide wire opening, the two tubular members are movable relative to one another to allow delivery of a stent 16 from a stent deliver portion 14 of the inner tubular member when the inner tubular member is slid out from the outer tubular member enough to deploy the stent, and where inherently the distal head portion restricts the movement of the outer tubular member as seen in figure 6, and where the

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outer tubular member is provided with a handle portion 15. The patent to Lau discloses all of the recited structure with the exception of providing the outer tubular member with a guide ramp that extends into the inner tubular member guide wire opening. The patent to Muni discloses the recited rapid exchange stent delivery catheter comprising an inner tubular member 34 having a proximal and distal ends, a guide wire lumen extends through the inner tubular member and allows for the receipt of a guide wire 41 through a guide wire opening at the proximal end of the inner tubular member, an outer tubular member 31, the outer tubular member 11 is disposed on the inner member, the outer member has proximal and distal ends and a guide wire opening 42 which is shorter than the opening in the inner member, the inner member can be provided with a ramp 37 to help guide the wire into the inner members lumen where the ramp is formed by part of the outer tube extending into the inner lumen of the inner member through the opening, and where the inner member has a stent holding portion. It would have been obvious to one skilled in the art to modify the outer member of Lau to form a ramp that extends into the inner lumen to better guide the guide wire into the inner lumen as suggested by Muni to reduce the number of parts needed if the ramp is made from the outer member.

Claims 13-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yurek in view of Muni. The patent to Yurek discloses the recited rapid exchange stent delivery catheter comprising an inner tubular member 38 having a guide wire lumen there through for wire 50, that passes through an opening in the inner tubular member as seen in figure 1, where inner tubular member 38 is provided with a handle portion 36

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and a distal head 40 which is sized to be larger than the inner diameter of an outer tubular member 20, the outer tubular member is also provided with a guide wire opening and has a handle portion 28, the two tubular members are movable relative to one another to allow delivery of a stent 18 from a stent deliver portion of the inner tubular member when the inner tubular member is slid out from the outer tubular member enough to deploy the stent, and where inherently the distal head portion restricts the movement of the outer tubular member as seen in figure 2, and where the inner tubular guide wire opening inherently is long enough to deploy the stent. The patent to Yurek discloses all of the recited structure with the exception of providing the outer tubular member with a guide ramp that extends into the inner tubular member guide wire opening. The patent to Muni discloses the recited rapid exchange stent delivery catheter comprising an inner tubular member 34 having a proximal and distal ends, a guide wire lumen extends through the inner tubular member and allows for the receipt of a guide wire 41 through a guide wire opening at the proximal end of the inner tubular member, an outer tubular member 31, the outer tubular member 11 is disposed on the inner member, the outer member has proximal and distal ends and a guide wire opening 42 which is shorter than the opening in the inner member, the inner member can be provided with a ramp 37 to help guide the wire into the inner members lumen where the ramp is formed by part of the outer tube extending into the inner lumen of the inner member through the opening, and where the inner member has a stent holding portion. It would have been obvious to one skilled in the art to modify the outer member of Yurek to form a ramp that extends into the inner lumen to better guide the guide wire

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into the inner lumen as suggested by Muni to reduce the number of parts needed if the ramp is made from the outer member.

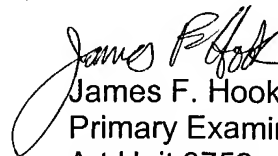
### **Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Keith, Burns, Willard, Kramer, and Lau (694, 459, and 789) disclosing state of the art catheters.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James F. Hook whose telephone number is (703) 308-2913. The examiner can normally be reached on Monday to Wednesday, work at home Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on (703) 308-2087. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
James F. Hook  
Primary Examiner  
Art Unit 3752

JFH